

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION
Auto Compliance Bureau
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**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of

Mercury Insurance Company,
Mercury Casualty Company, and
California Automobile Insurance
Company,
Respondents.

File No. NC-03027545

NOTICE OF NONCOMPLIANCE
PURSUANT TO CALIFORNIA INSURANCE
CODE SECTION 1858.1

ACCUSATION PURSUANT TO
CALIFORNIA INSURANCE CODE
SECTION 704

ORDER TO SHOW CAUSE, STATEMENT
OF CHARGES, AND NOTICE OF HEARING
PURSUANT TO CALIFORNIA INSURANCE
CODE SECTION 790.035/790.05

NOTICE OF NONCOMPLIANCE PURSUANT TO CALIFORNIA
INSURANCE CODE SECTION 1858.1¹

TO: MERCURY INSURANCE COMPANY, MERCURY CASUALTY COMPANY, and
CALIFORNIA AUTOMOBILE INSURANCE COMPANY:

YOU ARE HEREBY NOTIFIED that the Insurance Commissioner of the State of
California ("Commissioner") has good cause to believe that your rates, rating plans or rating
systems and underwriting rules violate and have violated the California Insurance Code, as
described below.

¹ All statutory references are to the California Insurance Code, unless otherwise indicated.

1.

Respondents at all relevant times have been insurers licensed by the Commissioner to transact insurance in this state. All of Respondents' policies pertinent to this matter are subject to sections 1861.01(c), 1861.03 and 1861.05.

2.

On June 30, 2000, in the Superior Court for the State of California, County of San Francisco ("Court"), in case no. 313367, Robert Krumme filed a civil complaint under California Business and Professions Code sections 17200 *et seq.* On April 11, 2003, the Court entered Findings of Fact and Conclusions of Law after Trial ("Findings and Conclusions") in favor of Krumme. The following paragraphs of the Findings and Conclusions are incorporated by reference into this Notice and constitute allegations by the Commissioner:

Findings of Fact:

Incorporated: 1 – 50, 56, 57

Not incorporated: 51, 52, 53, 54, 55

Conclusions of Law:

Incorporated: 1-8, 9 (lines 9 – 15 up until "license."), 10 – 25

3.

From July 1, 1996, to April 11, 2003, Respondents willfully permitted their insurance agents to charge "broker fees" to Respondents' policyholders. In charging these fees, Respondents' agents acted in the course and scope of their agency. Under California law, all payments by policyholders which are a part of the price of insurance, including all sums paid to an insurance agent, are considered premium. Consequently, Respondents constructively received the "broker fees" (i.e. premium) collected by their agents. Respondents did not receive the Commissioner's prior approval to charge or receive the moneys constituting the "broker fees." As a result of permitting its agents to charge and collect the broker fees, Respondents constructively charged and collected premium in excess of the rates approved for them by the Commissioner, in violation of section 1861.01(c).

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1 4.

2 Because Respondents' agents charged broker fees of varying amounts, Respondents
3 insureds were subjected to unfair rate discrimination, in violation of section 1861.05(a).
4 Respondents willfully permitted the rate discrimination to occur.

5 5.

6 From July 1, 1996, to April 11, 2003, Respondents published advertisements that
7 compared Respondents' premiums with the premiums of competitors. The advertisements
8 indicated that Respondents' rates were lower than the rates of Respondents' competitors. In the
9 advertisements, Respondents willfully failed to disclose that broker fees might be charged in
10 addition to the premium. By not mentioning the broker fees in the advertisements, Respondents
11 willfully misrepresented the actual price insurance consumers could expect to pay for insurance
12 from Respondents, and thus deceived and misled consumers. The advertisements were also
13 deceptive and misleading because the undisclosed broker fees in some cases made the price of
14 insurance from Respondents greater than the price from one or more of the competing insurers
15 cited in the advertisements. Respondents comparative rate advertisements violated sections
16 790.03(a) and (b).

17 6.

18 The facts alleged in paragraphs 1 – 4 establish that Respondents willfully used a rate,
19 rating plan or rating system in violation of Chapter 9 of Part 2 of Division 1 of the Insurance
20 Code, and provide grounds for a fine of \$10,000 for each policy in which a Respondent permitted
21 a broker fee to be charged by one of its agents, pursuant to section 1858.07(a).

22
23 ACCUSATION

24 The facts alleged in paragraphs 1 – 5 are realleged. Those facts establish that
25 Respondents conducted their business fraudulently, and provide grounds for the Commissioner to
26 suspend their certificates of authority for one year, pursuant to section 704(a).

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ORDER TO SHOW CAUSE, STATEMENT OF CHARGES,
AND NOTICE OF HEARING PURSUANT TO
CALIFORNIA INSURANCE CODE SECTION 790.035/790.05

The facts alleged in paragraphs 1 and 5 are realleged. Those facts establish that Respondents willfully engaged in unfair or deceptive acts or practices defined in sections 790.03, and constitute grounds to impose a civil penalty of \$10,000 for each act. For the purpose of calculating the total amount of the civil penalty under section 790.035, a separate act shall exist for each and every date on which any Respondent's advertisement of the type described in paragraph 5 appeared in any newspaper in this state, appeared in any correspondence mailed to any prospective insured in this state, or appeared in any television commercial.

Respondents are ordered to appear at a hearing, on a date to be determined and separately noticed, and show cause, if any exists, why it is not liable as alleged in this pleading.

Dated: February 2, 2004

CALIFORNIA DEPARTMENT OF INSURANCE

By _____/s/
Jon A. Tomashoff, CPCU
Senior Staff Counsel

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